

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF MISSISSIPPI  
NORTHERN DIVISION

ANTHONY JAI BROWN

PLAINTIFF

V.

CIVIL ACTION NO. 3:18-CV-528-DPJ-JCB

WARDEN CHERON NASH, ET  
AL.

DEFENDANTS

ORDER

This pro se *Bivens* action is before the Court on Defendants' Motion to Dismiss or for Summary Judgment [21] and the Report and Recommendation [29] of United States Magistrate Judge John C. Gargiulo.<sup>1</sup> Judge Gargiulo recommended that Defendants' motion be granted in part, as follows:

Defendant Dean should be dismissed without prejudice based on [Plaintiff Anthony Jai] Brown's failure to exhaust any claims against him. Brown's claim regarding unsanitary food service and his equal protection claim should also be dismissed without prejudice based on his failure to exhaust. Brown's excessive force claim should be dismissed with prejudice because the *Bivens* remedy should not be extended to this context. Brown's First Amendment and retaliation claims should be dismissed with prejudice as the Defendants are entitled to qualified immunity.

Report & Recommendation [29] at 18. Judge Gargiulo recommended that the motion be denied without prejudice as to the due-process claim against Defendants Warden Cheron Nash and Associate Warden Sylvester Jenkins. *Id.* Neither side filed objections, and the time to do so has now expired.

The Court, having reviewed the unopposed Report and Recommendation [29], adopts it as its opinion. Defendants' Motion to Dismiss or for Summary Judgment [21] is denied without

---

<sup>1</sup> *Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics*, 403 U.S. 388 (1971).

prejudice as to the due-process claim against Defendants Nash and Jenkins but otherwise granted.

**SO ORDERED AND ADJUDGED** this the 10th day of January, 2020.

s/ Daniel P. Jordan III  
CHIEF UNITED STATES DISTRICT JUDGE